


# DEPARTMENT OF MENTAL HEALTH

## POLICY / PROCEDURE



SUBJECT:  <b>DISCIPLINE</b>	POLICY NO.  <b>605.1</b>	EFFECTIVE DATE  <b>04/01/02</b>	PAGE  <b>1 OF 13</b>
APPROVED BY:    Director	SUPERSEDES  <b>N/A</b>	ORIGINAL ISSUE DATE  <b>04/01/98</b>	DISTRIBUTION LEVEL(S)  <b>1</b>

- PURPOSE:**
- 1.1 To assist Department of Mental Health (DMH) supervisors and managers in deciding when and how to impose discipline.
  - 1.2 To set forth general practices and policies of the DMH that should be or are required to be followed in consultation with Human Resources Bureau staff.
  - 1.3 To notify all employees of consequences for employee misconduct or violations of Departmental policies.

- POLICY:**
- 2.1 County Civil Service Rule 18 provides that an employee may be disciplined, including discharge, for failure to perform his/her assigned duties so as to meet explicitly stated or implied standards of performance.
  - 2.2 All employees will be held accountable for their actions and omissions, both intentional and negligent, and management will take appropriate disciplinary measures.
    - 2.2.1 The basis for disciplinary action may include, but is not limited to, qualitative as well as quantitative elements of performance, such as:
      - ♦ failure to exercise sound judgment;
      - ♦ failure to report information accurately and completely;
      - ♦ failure to deal effectively with the public;
      - ♦ failure to make productive use of human, financial and other assigned resources;
      - ♦ any behavior or pattern of behavior which negatively affects an employee's productivity or which is unbecoming a County employee;
      - ♦ any violation of a County, State, Federal or departmental policy, procedure or rule;
      - ♦ any behavior or condition which impairs an employee's qualification for his or her position or for continued employment.
  - 2.3 Disciplinary measures are to be imposed as soon as possible after the incident or problem occurred or an allegation is received, subject to the gathering and determination of relevant information, hearing the employee's "side of the story", and complying with any due process requirements described in Section 5 below.

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2.4 Discipline for Off-the-Job Conduct. The misconduct or wrongdoing does not necessarily have to occur during working hours on County property or in the performance of job duties. In some circumstances, off-the-job conduct can affect the employee's suitability for employment with the DMH or his/her ability to perform the job, such as with conflict of interest situations and some criminal offenses.

2.5 Fair Labor Standards Act (FLSA) Exempt Employees. Suspensions of FLSA-Exempt employees may only be imposed in full workweek increments, unless the misconduct involves an infraction of a safety rule of major significance. When the cause for the suspension is such a violation, the suspension may include part of a workweek.

2.5.1 A "safety rule of major significance" means a rule which is intended to prevent serious danger in the workplace.

2.6 "Due process" requirements exist to protect vested or property rights to employment. Depending upon the exact status of the employee, requirements may come into play either prior to, during, and/or after the imposition of a suspension, reduction or discharge action.

### DEFINITIONS:

3.1 A first time probationer is a permanent employee who has not completed his/her initial probationary period as a County employee or who has been reinstated in accordance with DMH Policy 601.2

3.2 A warning, the mildest form of disciplinary action, is a formal written notice to an employee that further disciplinary action will be taken unless the misconduct stops or performance improves.

3.3 A reprimand is the next more serious form of written discipline. It is normally issued when misconduct or poor performance has continued despite counseling and/or a warning; or when on first occasion, the incident of wrongdoing or poor performance negatively impacts the office or Departmental operations.

3.4 A suspension is the temporary removal of an employee from his/her duties without pay for up to thirty (30) consecutive calendar days, except as provided in Section 4.13.3.2.

3.5 A reduction is an involuntary lowering of a permanent employee's rank or grade, for cause at anytime, to his/her last position held on a permanent basis in the Department of Mental Health. This includes the position held by

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- permanent employees serving a probation period following a promotion.
- 3.6 The date of service of notice means the date the employee was hand delivered or mailed the intent letter, final discipline letter or warning or reprimand.

### PROCEDURES:

- 4.1 Before imposing any disciplinary measure, certain steps need to be taken by the manager or supervisor upon learning of an allegation of or identifying wrongdoing or poor performance.
- 4.1.1 Investigate – Gather the Relevant Facts The investigation should proceed as quickly as possible on an objective, impartial basis. Interview and obtain written statements from witnesses and participants, including the employee, to obtain his/her explanation or or side of the story (see Section 5.0 – Due Process and Appeals).
- 4.1.2 Determine What the Facts Reflect The evidence should be relevant to either establishing or disproving misconduct and viewed in the light of what reasonable people are accustomed to rely upon in the conduct of serious affairs.
- 4.1.3 If established, evaluate the significance of the misconduct or poor performance.
- 4.1.4 Decide on the appropriate disciplinary measure.
- 4.1.5 During any step of the process, consult with Employee Relations staff in the Human Resources Bureau.
- 4.2 FACTORS TO CONSIDER IN DECIDING ON APPROPRIATE DISCIPLINE
- 4.2.1 Reasonable judgment with an understanding of the purpose of disciplinary action is a prerequisite.
- 4.2.2 Some factors which should be considered in deciding on the degree of both progressive and non-progressive discipline include the seriousness of the individual infraction compared to previous infractions and/or other types of offenses; consistency of contemplated discipline actions imposed on employees for the wrongdoing, the attitude, explanation and degree of culpability of the employee; the length of service and overall work performance of the employee; in progressive discipline, the frequency and length of time between occurrences.

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4.3 There are two basic approaches to disciplinary actions in the DMH.

4.3.1 The most prevalent approach is the progressive-step method, which calls for increasing severity of discipline because the employee is repeatedly violating policy, committing wrongdoing or performing in an inappropriate manner.

4.3.2 The second approach is non-progressive discipline when moderate or severe levels of disciplinary actions are initially imposed because of the nature of the wrongdoing or poor performance.

#### 4.4 PROGRESSIVE DISCIPLINE

4.4.1 After informal non-disciplinary action has been taken without success, the manager or supervisor must assert the unacceptability of the employee's continued wrongdoing or poor performance through progressive disciplinary actions. This method attempts to correct, resolve or remove the employee performance or misconduct problem at the least stringent but most effective measure, consistent with guidelines established in this and other DMH policies.

4.4.2 Progressive discipline is generally appropriate in cases of continuing or repeated misconduct, such as refusal or failure to follow routine work instruction, incidents of unauthorized absences and technical or minor violations of policies.

#### 4.5 NON-PROGRESSIVE DISCIPLINE

4.5.1 Generally, the misconduct or poor performance calling for non-progressive discipline are incidents that the employee should have reasonably known to be unacceptable without specific notice from the supervisor, manager or DMH, or which are socially unacceptable.

4.5.2 Such behavior includes, but is not limited to, violent or blatantly disruptive behavior such as fighting or threatening violence; dishonesty; serious violations of professional ethics and standards; wrongdoing which is illegal or places the DMH in violation of Federal, State or local laws or court orders; wrongdoing which clearly places the life, health, property or funds of a client, employee or member of the public in jeopardy or unnecessarily jeopardizes the property or funds of the County; conduct that could or does result in loss, suspension or restriction of a professional license required for

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employment with the DMH.

#### 4.6 DISCIPLINE FOR OFF-THE-JOB CONDUCT

4.6.1 When the off-the-job conduct relates to the goals or mission of the Department or the duties of the employee's job, disciplinary measures, including discharge, may be imposed.

4.6.2 Conduct which is also deleterious to the County's Civil Service system, such as cheating in an examination or falsifying an examination application, is also disciplinable even though it is not related to the duties of the employee or mission of the Department.

4.7 In the DMH, the formal disciplinary measures from least to most severe are warning, reprimand, suspension, reduction and discharge (see Sections 4.8 through 4.13 for descriptions).

4.8 **Warning:** A notice of warning is usually issued when prior counseling has not corrected the misconduct or poor performance.

4.8.1 A notice of warning may be issued by the immediate supervisor or higher level in the employee's chain of command. The title of the written notice MUST include the word "Warning" and should identify a subject.

4.9 **Reprimand:** A reprimand is the next form of discipline.

4.9.1 It may only be issued by a District or Division Chief, administrative bureau head, or higher-level manager in the employee's chain of command. The title MUST include the word "Reprimand" and should identify a subject.

4.10 The following information should be included in the warning or reprimand.

4.10.1 Describe or document the misconduct or poor performance and why it is unacceptable; include dates, times, etc., and any policy citations or supervisory expectations.

4.10.2 Identify relevant, previous counseling or disciplinary actions.

4.10.3 Incorporate the employee's reason or explanation, if any, and any supervisory response to the stated reason.

4.10.4 Reference expectations for future conduct or performance.

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4.10.5 Identify the disciplinary consequences of repetition, continuation or lack of improvement.

4.10.6 The employee must receive a copy of the warning or reprimand and shall acknowledge its receipt by signing the original. If the employee refuses to sign, the supervisor shall annotate that refusal on the bottom of the original and have another supervisor or manager witness and sign. If the employee is absent from work, the warning or reprimand shall be sent by certified mail, return receipt requested, with a copy sent by regular, first class mail.

4.11 Warnings and reprimands may be referenced in the performance evaluation when appropriate, covering the period during which they were issued. If a grievance has been filed, said documents shall not be referenced until the grievance process or civil service appeal rights have been exhausted.

4.12 Warnings and reprimands should be adequately referenced in the performance evaluation or Appraisal of Promotability covering the period during which they were issued. Except, if a grievance has been filed, said documents shall not be referenced until the grievance process or civil service appeal rights have been exhausted.

4.13 **Suspension:** A suspension is imposed under the authority and approval of the Director of Mental Health or the Chief Deputy Director. Except as described in Section 4.11.4, suspensions are imposed through letters prepared and issued by Human Services Bureau staff.

4.13.1 As progressive disciplinary measures, suspensions are imposed when previous lesser disciplinary measures have not corrected the misconduct or poor performance. A suspension is usually the step before discharge.

4.13.2 As a non-progressive disciplinary measure occurring on first incident of wrongdoing, a suspension is utilized when the misconduct is so significant that the operations of the unit have been or could have been seriously affected; or the interests of a client or the substantial interests of the DMH compromised; or a major Departmental policy affecting the treatment, the safety or security of employees, clients or the public, or the integrity of public funds or official documents violated.

4.13.3 In some circumstances, a suspension may be imposed that

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is not disciplinary in nature:

4.13.3.1 Suspension Pending Investigation. An employee may be suspended pending the results of an investigation into allegations of serious misconduct, which require the employee's removal until the facts can be determined. Usually, the nature of the allegations, if true, would tend to render the individual immediately unsuitable for employment with the DMH. The investigation must then be conducted as rapidly as possible to determine if the allegations are true and, if so, what disciplinary measure needs to be taken.

4.13.3.2 Suspension as a Result of a Criminal Indictment An employee may be suspended following a criminal indictment, charge or complaint filed against him/her and pending the outcome of a criminal trial or resolution of the indictment. The nature of the criminal charge should be one related to the duties of the employee, or the mission or goals of the DMH. When such a suspension occurs, the period of suspension may exceed thirty (30) calendar days but not exceed thirty (30) calendar days after the conviction or acquittal has become final.

4.13.3.3 Suspension of Employee with Expired Professional License, Registration or Waiver Employees whose professional license has expired are not permitted to continue to work until their license has been renewed and a copy of the license provided to management.

#### 4.13.4 VERBAL NOTIFICATION OF IMMEDIATE SUSPENSION

4.13.4.1 Oral suspensions may be imposed, using the process identified in Section 4.11.4.2, when the allegations are so serious that the employee's continued presence on the job pending the investigation or discharge represents an imminent danger to other individuals, including clients under the care of the DMH, or to the security or safety of any property or assets of the County. The employee is then to leave work and not return until further notice.

4.13.4.2 An employee may be suspended when circumstances require, as described above, by verbal notification by a

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Program Head or higher-level manager, followed by the written notification process identified in Section 5.2. However, no manager may orally suspend an employee without having first consulted with and received concurrence from the Personnel Officer or designee.

- 4.13.5 Suspensions may be imposed in conjunction with reduction or discharges.
- 4.13.6 Suspensions of first-time probationers and temporary employees, who serve at the will of the Department, are not appropriate. First-time probationers and temporary employees are to be terminated for any misconduct or poor performance warranting a suspension of a permanent employee. Permanent employees either promoted on a temporary basis or serving a probation period following a permanent appointment should be returned to their last position held on a permanent basis.
- 4.14 **Reduction:** A reduction is imposed under the authority and approval of the Director of Mental Health or the Chief Deputy Director through letters prepared and issued by Human Resources Bureau staff.
- 4.14.1 Compared to a discharge, a reduction would be more appropriate in cases involving inefficiency or poor performance in a position, which would not be reflective of the employee's basic unsuitability for employment with the DMH. It may occur as a result of an "unsatisfactory" performance evaluation or following disciplinary actions.
- 4.15 **Discharge:** A discharge may only be imposed under the authority and approval of the Director of Mental Health or Chief Deputy Director through letters prepared and issued by Human Resources Bureau staff.
- 4.15.1 Generally, a discharge will be imposed when the progressive disciplinary approach has not corrected or stopped ongoing misconduct; or when a single incident of misconduct renders the employee no longer suitable for employment with the DMH.
- 4.15.2 Employees whose license, registration or waiver has expired and will not be renewed may not continue working in the same licensed position. They will be discharged unless they find alternative, non-licensed employment in the Department (effective the date of the un-renewed license or registration waiver).

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4.15.3 Temporary employees serve at the discretion of the Department and may be terminated at any time, in writing, with or without cause, by a Deputy Director or higher level manager in consultation with the Personnel Officer or designee. No reason for termination need be given. If the manager desires to terminate a temporary employee for cause, the manager must consult with his/her Employee Relations Representative in the Human Resources Bureau before taking any action.

5.0 **Due Process and Appeals:** The following is a description of various procedures and rights employees have in responding to disciplinary actions.

### 5.1 ALL EMPLOYEES

5.1.1 An employee may request a representative (shop steward, attorney, etc.) be present during an investigatory meeting with a supervisor, manager or other management representative when he/she reasonably believes the interview may lead to discipline against him/her. Routine supervisory meetings in which work instructions are given do not fall under this provision. Supervisors and managers should consult with their Departmental Employee Relations Representative in Human Resources Bureau for further guidance.

5.1.2 An employee may request to file a response in his/her Official Personnel folder to any disciplinary action notice or letter filed by the Department in the folder. He/she may answer, deny or explain the assertions or facts contained in the disciplinary notice. The response must be filed within ten (10) business days of the receipt of the notice.

5.1.3 An employee, in accordance with either the relevant grievance article of the MOU for his/her bargaining unit, may utilize the departmental grievance procedure. However, utilization of the grievance procedure is not a substitute for any rights provided by Civil Service Rules and does not extend any filing periods for appeals provided by the Rules.

5.1.4 In accordance with applicable MOU procedures or with DMH policy, an employee may have a warning issued more than one year prior and filed in the Official Personnel File placed in an envelope and sealed in his/her Personnel File, except as such may be part of an official permanent record. Any written warnings or reprimands issued

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more than two years prior may be removed from his/her personnel file except as such may be part of an official permanent record. To have these documents sealed or removed, the employee must submit a letter to the Department Personnel Officer.

### 5.2 PERMANENT, NON-PROBATIONARY EMPLOYEE – PRIOR TO SUSPENSION, REDUCTION OR DISCHARGE

- 5.2.1 The Department must formally notify the employee in writing of an intent to suspend, reduce or discharge prior to the imposition of the disciplinary action unless the employee was orally suspended in accordance with Section 4.11.4. The letter of intent specified the nature of the intended action, the reasons for the intended action and the intended effective date. It identifies the employee's right to respond to the Director of Mental Health or designee prior to the imposition of the disciplinary action.
- 5.2.2 The employee's response may be through a meeting with the manager or through a written statement, or both, to the Director or designee. The employee has a right to representation in presenting a response. The Department need only give a reasonable time, generally not exceeding ten (10) calendar days from the date of notice, for the employee to respond to the intent to suspend, reduce or discharge.
- 5.2.3 Following the response, if the Department proceeds with a suspension, reduction or discharge, the employee will be notified in writing of the effective date of and the reasons for the action. The letter will also identify any right to appeal the discipline as described below in Sections 5.3 through 5.8.
- 5.2.4 At the time the Department's notice of intent is provided in accordance with Section 5.2.1 above, the Department, at the discretion of the Director or Chief Deputy Director, may place the employee on leave with regular pay pending the employee's response and the Department's final decision.

### 5.3 PERMANENT, NON-PROBATIONARY EMPLOYEE – AFTER IMPOSITION OF A SUSPENSION, REDUCTION OR DISCHARGE

- 5.3.1 Reductions and Discharges. Within fifteen (15) days from the date of notice of the final discharge or reduction letter, the employee may appeal to the Civil Service Commission by requesting a hearing. The

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employee's petition must be in writing and identify the action which is being appealed.

5.3.2 Suspension of Five Days or Less. Within fifteen (15) business days of service of the final suspension letter, the employee may file a written appeal with the County Department of Human Resources - Appeals Division. The employee's appeal must contain specific, detailed information in support of the appeal.

5.3.3 Suspension of More Than Five Days. Within fifteen (15) business days of service of the final suspension letter, the employee may appeal in writing to the Civil Service Commission by petitioning for a hearing. The employee's petition must identify the action which is being appealed and contain sufficient, detailed facts and reasons upon which the appeal is based.

#### 5.4 FIRST-TIME COUNTY PROBATIONER – PRIOR TO DISCHARGE, REDUCTION

5.4.1 The first-time probationer who has not previously served in the County may be reduced in lieu of discharge to an appropriate position when, in the opinion of the Director or Chief Deputy Director, circumstances warrant.

5.4.2 The probationer who is being discharged or reduced is not entitled to notice of intent to discharge or reduce nor an opportunity to respond prior to the action, except as noted in Section 5.4.1.

5.4.3 When the basis for the discharge is an allegation(s) of socially stigmatizing conduct which affects the individual's ability for obtaining future employment, the Department will notify the first-time probationer of its intent to discharge and provide an opportunity to respond in order to "clear his/her name". Socially stigmatizing conduct is conduct which impairs the employee's reputation for honesty or morality or the employee's standing and associations in the community. Discharges for poor performance, violations of rules and regulations or poor attendance are not considered socially stigmatizing and notice of intent to discharge will not be provided in these circumstances.

5.4.4 When the probationer is being discharged or reduced, he/she must be notified in writing of the action prior to its effective date and prior to midnight of the last day of the probationary period. The action

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must be effective prior to midnight of the last day of probation.

5.4.5 The discharge or reduction letter must identify the reasons for the action and any appeal rights the employee may have.

### 5.6 FIRST-TIME COUNTY PROBATIONER – AFTER IMPOSITION OF A REDUCTION OR DISCHARGE

5.6.1 Within ten (10) business days of notice of discharge or reduction, the employee may file a written appeal with the County Department of Human Resources – Appeals Division. The appeal must contain specific, detailed information upon which the appeal is based.

### 5.7 PERMANENT EMPLOYEE SERVING SUBSEQUENT PROBATIONARY PERIOD

5.7.1 A permanent employee who has completed his/her first probationary period as a County employee and who is serving a probationary period following a promotion, a voluntary change in classification or a restoration as described in DMH Policy 601.2 is a probationary employee only for the purposes of the position in which he/she is then serving. For County employment status the individual is considered permanent, non-probationary. When the restoration is part of a reinstatement, the employee shall be considered a first-time probationer.

#### 5.7.2 Prior to a Suspension, Reduction or Discharge.

The employee who is being involuntarily reduced will not be entitled to a notice of intent to reduce nor an opportunity to respond prior reduction. The employee is entitled to a letter of intent to suspend or discharge with an opportunity to respond prior to the action.

#### 5.7.3 After Imposition of a Suspension or Discharge

The employee retains the same rights as other permanent employees and may appeal as appropriate (see Section 5.3) to either the Civil Service Commission or County Department of Human Resources - Appeals Division.

#### 5.7.4 After Imposition of a Reduction

The employee is only entitled to the appeal rights of a first-time probationer (see Section 5.6.1).

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### 5.8 TEMPORARY EMPLOYEES

5.8.1 Temporary employees have no appeal rights on a release or termination.

5.8.2 A permanent employee promoted on a temporary basis shall have appeal rights as other permanent employees if he/she is suspended or discharged (see Section 5.3.1). Employees returned to their former permanent position will have no appeal rights.

6.0 Date of Notice: When a notice is sent by mail, the date is established when the correspondence is deposited at a United States Post Office or in a USPS mailbox, sub-post office, sub-station or mail chute, or like facility regularly maintained by the U.S. government. The correspondence must be in a sealed envelope, properly addressed to the last known address of the employee, with postage paid. Proof of service must be kept by the server through a statement certifying that the correspondence was either hand-delivered or mailed unless the employee acknowledges receipt of the correspondence.

### AUTHORITY:

Los Angeles County Civil Service Rules  
Department of Mental Health Policy

### REVIEW DATE:

This policy shall be reviewed on or before April 1, 2007.